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Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Inquiry Concerning High-Speed
Access to the Internet Over
Cable and Other Facilities

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GN Docket No. 00-185

COMMENTS OF THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS

The Association of America's Public Television Stations ("APTS") hereby submits its comments in the above captioned proceeding. APTS is a nonprofit organization whose members comprise nearly all of the nation's 352 noncommercial educational television stations. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch, as well as engaging in planning and research activities on behalf of its members.

In addition to offering unparalleled quality educational broadcast services, public television stations engage in a wide range of educational, cultural and civic initiatives in their communities. These activities include educational and cultural outreach efforts in schools, libraries and museums; civic outreach through town hall meetings on issues of local importance; and partnerships with other local non-profit entities. With the advent of digital television, public television stations envision a future in which their mission to serve the educational needs of their communities can be accomplished through a variety of new technologies. Among potential applications that some public television stations are actively exploring is the use of their excess digital television capacity to provide Internet access and other broadband services, particularly to

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local schools and libraries. Accordingly, APTS respectfully requests that the Commission consider the interests of public television stations and the importance of these services when evaluating the issues surrounding high-speed access to the Internet over cable facilities.

A number of public television stations have voiced an interest using their ancillary and supplementary digital spectrum to provide Internet access and other broadband services.¹ Local schools and libraries in particular would be the likely beneficiaries.

- For instance, WHRO in Norfolk, Virginia has launched “WHROlink,” a new service that would allow the station to serve as the Internet service provider for its community’s schools and libraries. WHRO also intends to provide support staff and training seminars for teachers at the station’s on-site computer labs.
- To enhance its World Wide Web presence, KMOS in Warrensburg, Missouri plans on creating online searchable resource guides for teachers, providing video streaming of previews of the station’s local programming and providing Internet access to teachers in rural school districts.
- And KENW in Portales, New Mexico plans on using its datacasting capabilities to provide teacher guides, as well as other data related to its instructional television programming, to public schools, as well as providing Internet access to rural public schools in its community of license.

In providing broadband services or Internet access, public television stations may reach their customers over the existing infrastructure of a local cable system, with the customer using either an interactive set-top box or a cable modem. Alternatively, public television stations may use their over-the-air broadcast capability to deliver downloaded material, coupled with a response channel via telephone or cable. Although ancillary and supplementary services are not

¹ As the Commission knows, Section 336 of the Communications Act permits digital television licensees to offer any digital “ancillary or supplementary services” as may be consistent with the “public interest, convenience, and necessity,” 47 U.S.C. § 336(a)(2), so long as the such services do not derogate the free, over-the-air program service. See 47 U.S.C. § 336(b)(2) and 47 C.F.R. § 73.624(c). A notice of proposed rulemaking is currently pending before the Commission to determine what, if any, additional restrictions apply to the use of ancillary and supplementary capacity by noncommercial licensees and whether such licensees should be required to pay a fee based on a proportion of revenues generated from such use. See In the Matter of Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees, Notice of Proposed Rulemaking, FCC 98-304, MM Docket No. 98-203 (November 23, 1998).

guaranteed carriage on cable systems,² each station has the option to negotiate for the carriage of these services with its local cable operator. Therefore, where the local cable system is used as a delivery mechanism for such services, it is vitally important that the cable system not attempt to discriminate against or otherwise interfere with the ability of public television stations to reach their audiences.

APTS is not in a position at this time to assert a view as to whether cable modem service is a cable service, a telecommunications service, an information service or some new category of service.³ Nor does APTS voice an opinion at this time regarding what specific model of open access the Commission should adopt.⁴ However, APTS does request that any regulations ultimately adopted should ensure that cable systems cannot discriminate against or otherwise interfere with the ability of consumers to receive the broadband services offered by public television stations on their ancillary and supplementary digital capacity.

Moreover, the principles of open access that apply to the main cable infrastructure should apply equally to the peripheral equipment and software used to access that infrastructure. For instance, the Commission asks “whether the entity that controls the design and deployment of the set top box or cable modem has an advantage in terms of access, applications, or content.”⁵ In particular, the Commission asks “what obstacles, if any, would the functions embedded in the set top box or cable modem present to unaffiliated ISPs that seek to deploy innovative services?”⁶ APTS believes that the principles of nondiscriminatory prices, terms and conditions should

² See 47 U.S.C. § 336(b)(3) and 47 C.F.R. § 73.624(c)(1).

³ See Notice of Inquiry, ¶¶ 21-24.

⁴ See Notice of Inquiry, ¶ 30.

⁵ See Notice of Inquiry, ¶ 31.

⁶ Id.

extend not only to the basic cable system, but also to the functions embedded in cable modems and set-top boxes. These functions include, but are not limited to, the operating system used as well as any security systems, navigation links, menus and caching functions.

In addition, the Commission has asked to what extent providers of non-cable technologies, including broadcasters, should be required to provide open access to competitors when providing broadband Internet access.⁷ APTS will not address at this time the question whether broadcasters in general should be subject to open access requirements when providing broadband Internet service to the public. However, APTS emphasizes that in those situations where local public television stations use their excess digital broadcast capacity to provide broadband and Internet services on a limited basis — for instance where they are not providing broadband service to the public at large but to a selected group of subscribers like schools and libraries, in furtherance of public television’s educational mission — the regulatory scheme associated with common carriage should not be applied to public broadcasters. Moreover, Congress established that it is in the public interest to ensure that our citizens have access to public telecommunications services “through all appropriate available telecommunications distribution technologies.”⁸ To impose common carriage obligations on public broadcasters that

⁷ “We also seek comment on the impact, if any, of adopting a particular model of open access on other high-speed service providers, including those using wireless, satellite, broadcast, and unlicensed spectrum technologies.” Notice of Inquiry, ¶ 30. See also Notice of Inquiry ¶ 44 (“Could the legal framework apply to other providers of high-speed services including those that employ wireless, satellite, broadcast, and unlicensed spectrum technologies?”). See also Notice of Inquiry, ¶¶ 3, 34, 46, 47, 49.

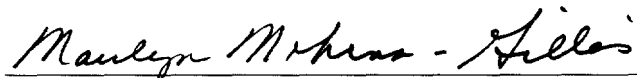
⁸ 47 U.S.C. § 396(9) (“[I]t is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies”). See also 47 U.S.C. § 396(2) (“[I]t is in the public interest to encourage the growth and development of nonbroadcast telecommunications technologies for the delivery of public telecommunications services”) and 47 U.S.C. § 396(7) (“[I]t is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States”).

provide such services would run contrary to this stated Congressional purpose by hindering their development.

Conclusion

APTS respectfully suggests that the Commission consider the interests of public television stations who use their ancillary and supplementary digital capacity to provide broadband services and Internet access, and the importance of these services in terms of national policy, when evaluating the issues surrounding high-speed access to the Internet over cable facilities.

Respectfully Submitted,



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